

§218.172

of this chapter, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in §218.170(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in §218.170(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in §218.170(c) is limited to the following species, by Level B harassment only and the indicated number of times:

(1) Harbor porpoise (*Phocoena phocoena*)—56,415 (an average of 11,283 annually);

(2) Northern fur seal (*Callorhinus ursinus*)—220 (an average of 44 annually);

(3) California sea lion (*Zalophus californianus*)—570 (an average of 114 annually);

(4) Northern elephant seal (*Mirounga angustirostris*)—70 (an average of 14 annually);

(5) Harbor seal (*Phoca vitulina richardsi*) (Washington Inland Waters stock)—27,340 (an average of 5,468 annually); and

(6) Harbor seal (*P. v. richardsi*) (Oregon/Washington Coastal stock)—505 (an average of 101 annually).

§218.172 Prohibitions.

Notwithstanding takings contemplated in §218.171 and authorized by a Letter of Authorization issued under §216.106 of this chapter and §218.176, no person in connection with the activities described in §218.170 may:

(a) Take any marine mammal not specified in §218.171(c);

(b) Take any marine mammal specified in §218.171(c) other than by incidental take as specified in §218.171(c);

(c) Take a marine mammal specified in §218.171(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and require-

50 CFR Ch. II (10–1–14 Edition)

ments of these regulations or a Letter of Authorization issued under §216.106 of this chapter and §218.176.

§218.173 Mitigation.

When conducting RDT&E activities identified in §218.170(c), the mitigation measures contained in this subpart and subsequent Letters of Authorization issued under §216.106 of this chapter and §218.176 must be implemented. These mitigation measures include, but are not limited to:

(a) Marine mammal observers training:

(1) All range personnel shall be trained in marine mammal recognition.

(2) Marine mammal observer training shall be conducted by qualified organizations approved by NMFS.

(b) Lookouts onboard vessels:

(1) Vessels on a range shall use lookouts during all hours of range activities.

(2) Lookout duties include looking for marine mammals.

(3) All sightings of marine mammals shall be reported to the Range Officer in charge of overseeing the activity.

(c) Visual surveillance shall be conducted just prior to all in-water exercises.

(1) Surveillance shall include, as a minimum, monitoring from all participating surface craft and, where available, adjacent shore sites.

(2) When cetaceans have been sighted in the vicinity of the operation, all range participants increase vigilance and take reasonable and practicable actions to avoid collisions and activities that may result in close interaction of naval assets and marine mammals.

(3) Actions may include changing speed and/or direction, subject to environmental and other conditions (e.g., safety, weather).

(d) An “exclusion zone” shall be established and surveillance will be conducted to ensure that there are no marine mammals within this exclusion zone prior to the commencement of each in-water exercise.

(1) For cetaceans, the exclusion zone shall extend out 1,000 yards (914.4 m) from the intended track of the test unit.

(2) For pinnipeds, the exclusion zone shall extend out 100 yards (91 m) from the intended track of the test unit.

(e) Range craft shall not approach within 100 yards (91 m) of marine mammals, to the extent practicable considering human and vessel safety priorities. This includes marine mammals “hailed-out” on islands, rocks, and other areas such as buoys.

(f) In the event of a collision between a Navy vessel and a marine mammal, NUWC Keyport activities shall notify immediately the Navy chain of Command, which shall notify NMFS immediately.

(g) Passive acoustic monitoring for cetaceans will be implemented throughout the NUWC Keyport Range Complex during RDT&E testing activities involving active sonar transmissions when passive acoustic monitoring capabilities are being operated during the testing activity.

(h) Procedures for reporting marine mammal sightings on the NAVSEA NUWC Keyport Range Complex shall be promulgated, and sightings shall be entered into the Range Operating System and forwarded to NOAA/NMML Platforms of Opportunity Program.

(i) If there is clear evidence that a marine mammal is injured or killed as a result of the proposed Navy RDT&E activities, the Naval activities shall be immediately suspended and the situation immediately reported by personnel involved in the activity to the Ranger Officer, who will follow Navy procedures for reporting the incident to NMFS through the Navy’s chain-of-command.

(j) For nighttime RDT&E activities of active acoustic transmissions in the Keyport Range proposed extension area, the Navy shall conduct passive acoustic monitoring within the Agate Pass and south of University Point in southern Port Orchard Reach. If Southern Resident killer whales are detected in the vicinity of the Keyport Range Site, the Range Office shall be notified immediately and the active acoustic sources must be shutdown if killer whales are confirmed to approach at 1,000 yards from the source.

§218.174 Requirements for monitoring and reporting.

(a) The Holder of the Letter of Authorization issued pursuant to §216.106 of this chapter and §218.176 for activities described in §218.170(c) is required to cooperate with the NMFS when monitoring the impacts of the activity on marine mammals.

(b) The Holder of the Authorization must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in §218.170(c) is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified or authorized in §218.171(c).

(c) The Navy must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the NAVSEA NUWC Keyport Range Complex Monitoring Plan, which is incorporated herein by reference, and which requires the Navy to implement, at a minimum, the monitoring activities summarized below:

(1) Visual Surveys:

(i) The Holder of this Authorization shall conduct a minimum of 2 special visual surveys per year to monitor HFAS and MFAS respectively at the DBRC Range site.

(ii) For specified events, shore-based and vessel surveys shall be used 1 day prior to and 1-2 days post activity.

(A) Shore-based Surveys:

(1) Shore-based monitors shall observe test events that are planned in advance to occur adjacent to near shore areas where there are elevated topography or coastal structures, and shall use binoculars or theodolite to augment other visual survey methods.

(2) Shore-based surveys of the test area and nearby beaches shall be conducted for stranded marine animals following nearshore events. If any distressed, injured or stranded animals are observed, an assessment of the animal’s condition (alive, injured, dead, or degree of decomposition) shall be reported immediately to the Navy and the information shall be transmitted immediately to NMFS through the appropriate chain of command.

(B) Vessel-based Surveys: